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Proceedings recorded by mechanical stenography, transcript
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P R O C E E D I N G S

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COURTROOM DEPUTY CLERK: The case before the court today is Case Number 5:20mj1155, United States of America versus Christian Stanley Ferguson.

THE COURT: Good afternoon.

I am going to start by having counsel identify themselves for the record starting with counsel for the United States.

MR. BROWN: Thank you, Your Honor.

For the United States, Duncan Brown.

THE COURT: Good afternoon.

I think there's another AUSA here, but I take it he is not participating in the hearing?

MR. RIEDL: MR. Brown will be speaking on behalf of the United States.

It's Dan Riedl also on behalf of the United States.

THE COURT: All right. And counsel for the defendant?

MS. KUCHARSKI: Carolyn Kucharski on behalf of Christian Ferguson.

THE COURT: Good afternoon.

I also see that we have the defendant, Mr. Ferguson.

1 Mr. Ferguson, can you see me and hear me?

2 THE DEFENDANT: Yes, I can, ma'am.

3 THE COURT: All right. Very good.

4 We have our court reporter, Lori Callahan, here.

5 And we also have pretrial services officer, Officer Julie

6 Gray, who's on the telephone, but is not on the video.

7 I see we also have an agent who I believe is going
8 to be a government witness in this case.

9 So this is -- we're now proceeding as a
10 preliminary hearing. The purposes of a preliminary hearing
11 is to determine whether probable cause exists for the charge
12 made against this defendant.

13 I will start by having the United States Attorney
14 summarize the charges made against the defendant, as well as
15 the penalties.

16 I will confirm with Mr. Ferguson that he has
17 received a copy of the complaint and attached affidavit. I
18 will also speak with him and ask him about his right to
19 counsel and then we will talk a little bit about the
20 procedure and the rules that pertain to this hearing.

21 So let's start by having Mr. Brown state the
22 charge that has been made against Mr. Ferguson and the
23 penalties for this charge.

24 MR. BROWN: Thank you, Your Honor.

25 The charges are 18, United States Code,

1 1201(a)(2)(5) and (d), which are attempted kidnapping on
2 federal territory or a special maritime or federal
3 jurisdiction territory of a federal officer engaged in their
4 official duties.

5 And the the statutory maximum period of
6 incarceration is 20 years with a fine of \$250,000, three
7 years of post supervised release and a \$100 special
8 assessment.

9 THE COURT: All right. Thank you, Mr. Brown.

10 I am now going to speak with Mr. Ferguson about
11 his right to counsel.

12 Mr. Ferguson, as I discussed with you the last
13 time we had a hearing in this case, you do have a right to
14 be represented by an attorney at every stage of the
15 proceedings in the case. If you're not able to afford to
16 hire an attorney, the court will appoint one without cost to
17 you to represent you.

18 Do you understand your right to an attorney?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And the court previously appointed the
21 office of the Federal Public Defender to represent you.

22 Ms. Carolyn Kucharski from that office is here
23 today, is on by video.

24 Do you understand that you are represented by
25 Mr. Kucharski and her office?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. Let me now talk a little
3 bit about the procedure.

4 Mr. Ferguson, at this hearing, you do -- you have
5 a right to cross-examine any witness that the government may
6 present. You also have the right to present evidence in
7 your own behalf.

8 You have the right to testify if you choose to,
9 but you also have the right not to testify. You may remain
10 silent. And you do have the right to remain silent.

11 You also have the right to consult with your
12 attorney at any time during the hearing.

13 The Rules of Evidence prohibiting hearsay evidence
14 do not apply. Both parties in the case have the right to
15 proceed in whole or in part by way of proffer.

16 The evidence of the examinations are limited to
17 the probable cause determination. This hearing is not any
18 means to obtain discovery or to produce testimony. They can
19 be used for subsequent impeachment at trial.

20 The court will not consider motion to suppress
21 evidence or objections to evidence allegedly obtained
22 unlawfully.

23 The order of presentation is the government will
24 proceed first with its evidentiary presentation, and that
25 will be followed by the defendant's presentation of evidence

1 and following that we will have brief argument from both
2 sides as to the probable cause determination.

3 So we will start with Mr. Brown.

4 Mr. Brown, you may proceed with your evidentiary
5 presentation.

6 MR. BROWN: Thank you, Your Honor. Good
7 afternoon.

8 (Unintelligible.)

9 THE COURT: All right. So, Mr. Brown, you may
10 proceed.

11 MR. BROWN: Thank you, Your Honor.

12 At this time, the government would proceed
13 entirely by proffering the complaint affidavit.

14 At this time, the government's position is that
15 the charges and the theory of the case and the grounds for
16 finding no probable cause the government argues are
17 contained in the affidavit, and we will proceed without
18 calling any further witnesses at this time.

19 THE COURT: All right. So I'd been told that you
20 were going to have a witness, but I take it that that is not
21 the case.

22 MR. BROWN: That's correct.

23 THE COURT: All right. So you are proffering the
24 complaint and the affidavit attached to the complaint or
25 proffering the affidavit, I take it?

1 MR. BROWN: That is correct, Your Honor.

2 THE COURT: That's why I need a copy of that
3 affidavit. Hopefully I will have that momentarily.

4 Ms. Kucharski, you may present whatever evidence
5 you choose to present at this point.

6 MS. KUCHARSKI: Your Honor, since the government
7 hasn't called Special Agent Dirker, and I believe he's on
8 the video call.

9 THE COURT: I don't know that you have the correct
10 name there.

11 MS. KUCHARSKI: The complaint says it was
12 submitted by a Kirk Dirker, D-I-R-K-E-R.

13 THE COURT: That is correct, but the agent at
14 least that I can see on the video is not that agent but a
15 different agent. It appears to be Agent Ryan Taylor.

16 MS. KUCHARSKI: Well, then I would call Agent Ryan
17 Taylor if that's the agent that's available.

18 THE COURT: Okay. The agent needs to be sworn in
19 as a witness by the courtroom deputy.

20 COURTROOM DEPUTY CLERK: Would you raise your
21 right hand, please?

22 RYAN TAYLOR
23 of lawful age, a witness called by the Defendant, being
24 first duly sworn, was examined and testified as follows:

25 THE COURT: I need to step back a moment for

1 important stuff that I omitted at the very outset, and that
2 is to confirm that Mr. Ferguson does agree to and does
3 consent to have this preliminary hearing conducted by video
4 conference.

5 So, Ms. Kucharski, did you have an opportunity to
6 discuss with your client his opportunity or his right to
7 have an in-person hearing, but that he also has a right to
8 waive the in-person hearing and to consent to having the
9 hearing conducted by video conference?

10 MS. KUCHARSKI: Your Honor, based on the pandemic
11 situation, he's prepared to waive an in-person hearing and
12 proceed by way of video.

13 THE COURT: And, Mr. Ferguson, can you confirm
14 that you do consent to this preliminary hearing conducted by
15 video conference?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Very good.

18 I apologize, Ms. Kucharski. We had Agent Taylor
19 sworn in, and you are about to begin your questions.

20 MS. KUCHARSKI: Yes. And I think the feed will
21 come through better if, Duncan, if you mute, and then if you
22 need to speak, you unmute.

23 Are you muted?

24 Okay. Thanks.

25 MR. BROWN: Muted.

1 MS. KUCHARSKI: Thank you.

2 DIRECT EXAMINATION OF RYAN TAYLOR

3 BY MS. KUCHARSKI:

4 Q. Agent Taylor, can you state your name, and tell the
5 court what your employment position is.

6 A. Yes, ma'am. My name is Ryan Taylor. I'm a special
7 agent with the Cleveland FBI. I have been with the FBI for
8 approximately 11 years, and I work on the domestic terrorism
9 squad, along with our special agent bomb technicians in the
10 office and also a member of the FBI SWAT team.

11 Q. And are you the lead investigator in this criminal
12 complaint that was filed against Christian Ferguson?

13 A. I was one of the co-case agents.

14 Q. What exactly does that mean?

15 A. So Special Agent Dirk Kirker was the lead investigator,
16 and I was his assistant investigator.

17 Q. Are you familiar with all aspects of this investigation
18 in the criminal complaint that was prepared?

19 A. Yes, I am.

20 Q. Have you had an opportunity to review all of the
21 evidence and the criminal complaint prior to your testimony
22 today?

23 A. I have been able to.

24 Q. And is there a reason why Special Agent Dirker isn't
25 present today and you're present on his behalf?

1 MR. BROW: I would object, Your Honor.

2 Your Honor, I would object to that question.

3 THE COURT: All right. We got it now.

4 Mr. Kucharski, I don't believe that's an
5 appropriate question for this witness, so I would uphold the
6 objection.

7 BY MS. KUCHARSKI:

8 Q. Special Agent Taylor, do you have a copy of the
9 complaint with you today?

10 A. Yes.

11 Q. And going to page 3 of that criminal complaint, it's
12 not a full paragraph, the sixth line of that -- of the first
13 few sentences on page 3 of that criminal complaint, do you
14 see that last sentence that starts halfway through line 3
15 where it says, "In screen shots provided to the FBI by
16 complainant, CF-Discord, later identified as Ferguson,
17 expressed a desire to call in a false in-progress call to
18 the police in order to lure law enforcement to a remote
19 location where they could be robbed of their weapons and
20 body armor and possibly killed."

21 Do you see that sentence?

22 A. Yes.

23 Q. So this tip that came into the FBI came in by somebody
24 who was a participant in a group chat with Christian
25 Ferguson, correct?

1 **A.** Yes.

2 **Q.** And how many people were a part of that group chat?

3 What did your investigation find with respect to that?

4 MR. BROWN: Objection. If he knows.

5 THE COURT: You can answer if you know, Agent.

6 THE WITNESS: I do not know.

7 BY MS. KUCHARSKI:

8 **Q.** You don't know how many people were involved in the
9 group chat?

10 **A.** I don't know who else was on with the complainant at
11 that time.

12 **Q.** Well, in the course of investigation screen shots that
13 you reviewed regarding this case, how many participants were
14 in the group chat that you reviewed with respect to this
15 participate -- criminal complaint?

16 MR. BROWN: Again, Your Honor, I'm going to object
17 unless this is somehow tied to the actions of May 8.

18 THE COURT: I'm going to overrule your objection.

19 The affidavit goes beyond. It doesn't -- you
20 know, it's not limited to May 8, so I think that whatever is
21 in the affidavit, which is deemed to support the criminal
22 complaint, is fair game.

23 MR. BROWN: Thank you, Your Honor.

24 THE COURT: I am sorry, Ms. Kucharski, we may have
25 -- do you want to repeat the question?

1 MS. KUCHARSKI: Sure.

2 BY MS. KUCHARSKI:

3 Q. When you have been investigating the actions that are
4 detailed in this criminal complaint, how many group
5 participants were there based on what's in the criminal
6 complaint?

7 A. There were several participants on the Discord chat. I
8 do not have an exact number based on the number of channels
9 and being a social media site. I don't have that exact
10 number for you.

11 Q. Well, when you say several, are we talking more than
12 five, between five to ten, less than five, what?
13 Approximately?

14 A. I believe you're correct. More than five.

15 Q. And in the course of your investigation, was it
16 determined who initiated this group chat?

17 A. Yes. Christian Ferguson explained to us that he was
18 the creator of the group chat.

19 Q. And do you have any independent proof of that as far as
20 like computer evidence or anything like that?

21 A. We have his messages that he posted, and through his
22 interview, he also confirmed that he created the site and
23 that they -- it was his user name and also the site that he
24 was using.

25 Q. And were you aware in the course of your investigation

1 that the people who came to be part of this group chat were
2 also people who are on military gaming platforms?

3 Do you know what I mean when I say that?

4 **A.** I don't know if I fully know what you mean.

5 I know -- I know of military gaming platforms that
6 people can log in and play different games, if that's what
7 you are referring to.

8 **Q.** Yeah. Like Call of Duty, or I think there's one called
9 Battlefield. There's a bunch of military type gaming video
10 platforms.

11 You're aware of those, correct?

12 **A.** Yes.

13 **Q.** And are you aware in the course of your investigation
14 that these people came together through that gaming
15 platform?

16 MR. BROWN: Objection, Your Honor.

17 This calls into facts that he has not testified he
18 has knowledge of, about other people's actions.

19 THE COURT: I'm sorry. I was mute.

20 I was asking Lori if you could read back the
21 question that was pending.

22 (Thereupon, the record was read back as requested.)

23 THE COURT: I think that the witness is now muted.

24 THE WITNESS: I am sorry, Your Honor.

25 Can you hear me now?

1 THE COURT: Yes.

2 THE WITNESS: I am not aware that they came
3 together through that gaming.

4 BY MS. KUCHARSKI:

5 Q. All right. You're not saying that is not the reason.
6 You're just not aware if it was the reason?

7 MR. BROWN: Objection, Your Honor.

8 THE COURT: Well, he could say if -- I think in
9 effect he's already answered it, but go ahead.

10 You could give your -- if you don't know, you
11 don't know. You can say that.

12 THE WITNESS: Correct, Your Honor.

13 I don't know. I can't say one way or another
14 whether the gaming site was what brought them together.

15 BY MS. KUCHARSKI:

16 Q. And you're aware in the interview that was conducted
17 with Mr. Ferguson that he had a desire to join the military,
18 correct?

19 A. Yes.

20 Q. And you knew that not only from him but from family
21 members you spoke to, as well, or other agents involved in
22 the investigation you spoke to, correct?

23 A. I did not learn that from family members, but I was
24 aware that he tried to join the military.

25 Q. Is it fair to say that in the complaint, the complaint

1 is just -- it doesn't include the entire case investigation,
2 correct?

3 **A.** That is correct.

4 **Q.** All right. We just have bits and pieces of the
5 conversations that were had on this, I guess, app, this
6 Discord app, correct?

7 **A.** Yes, that's correct. Not everything is in there.

8 **Q.** Okay. On page 3, when you first get into the -- in
9 paragraph 7, when it talks about chats that you reviewed
10 from March 21 of 2020, it states in there that this is kind
11 of just a summary of what was written, correct?

12 **A.** That is correct.

13 **Q.** Okay. Now, do you see that first quote, it says,
14 "Either we can subdue them or we perform a sync shot."

15 Do you see where that starts there?

16 **A.** Yes.

17 **Q.** Then it goes to say, "If you shoot, shoot to kill
18 because they will. If we can keep one or two alive to get
19 answers, great, but it's not an objective."

20 Do you see that?

21 **A.** Yes.

22 **Q.** Was it ever determined in the course of your
23 investigation what was being referred to by answers?

24 **A.** So later on in the investigation, especially on the day
25 where he specifically went out to conduct an active recon,

1 in preparation for the ambush and assault, he did mention
2 that if they were able to keep any police officers alive, I
3 think at one point, he said if more showed up, if they kill
4 three, they wanted to keep at least one alive so that they
5 could ask that person specifically intelligence questions,
6 along with -- I think just general questions on equipment
7 that's in the police car, but he did keep referencing
8 keeping one alive to at least try to get the intel from him.

9 Q. And this date, this March 21 of 2020 date, this is
10 conversation or text conversation that you are reviewing
11 before the tip came in this April, correct?

12 A. If you are referring to page 3, that paragraph in
13 there?

14 Q. Yes.

15 A. That's from the complainant so that was what was sent
16 to the FBI. The complainant called us and was concerned
17 about the things obviously that were written there, the fact
18 of going after cops, the complainant sent that to us, and
19 this is what we reviewed that they sent to us.

20 Q. Okay. And that was reviewed obviously after that
21 conversation had taken place, correct?

22 A. That is correct. We were not monitoring that realtime
23 at the time.

24 Q. Okay. And this complainant was someone who was a
25 participant within the group chat.

1 That's why they had access to those messages, correct?

2 **A.** Yes, I believe so.

3 **Q.** Now, in paragraph 9 on page 4, it starts off that there
4 were "Various investigative steps that the FBI took to
5 identify CF-Discord," who you later determined to be
6 Christian Ferguson.

7 What were those steps that you are referencing there?

8 MR. BROWN: Objection, if he knows all the steps.

9 THE COURT: Well, he can only answer what he
10 knows. I'm not going to -- the witness should not
11 speculate.

12 So you may answer as to what you know.

13 THE WITNESS: Yes, Your Honor.

14 I know we used -- we have analysts that will do
15 social media searches and look on line trying to look at
16 similar user names. We also have confidential human sources
17 that we can ask questions of if they're familiar with names
18 or other individuals on line.

19 We also query databases that we already have, both
20 local, state and federal databases, to see if there were
21 previous investigations with names related.

22 BY MS. KUCHARSKI:

23 **Q.** Okay. Those are some of the steps that you use?

24 **A.** Yes, those would be some of the steps.

25 **Q.** All right. With respect to -- well, all of the

1 conversations that's listed out in the complaint, that's
2 prior to April 3.

3 That's prior to any human source being introduced into
4 the investigation, correct?

5 THE COURT: It might be helpful if you would tell
6 him what you are referring to.

7 Are there paragraphs that you are referring to
8 here?

9 BY MS. KUCHARSKI:

10 Q. Well, the complainant called into the FBI on April 3,
11 correct?

12 A. Checking on the exact dates that's listed in the
13 complaint. I believe that --

14 Q. That's page 2. Page 2.

15 A. Yes. I have on or about April 3, 2020, the FBI
16 received a call-in complaint from a civilian who was later
17 referenced as the complainant named in the complaint.

18 Q. Okay. And then the complainant who called in that tip
19 to the FBI, is that the person that you ultimately
20 cultivated as one of the two confidential human sources that
21 are --

22 MR. BROWN: Objection, objection.

23 THE COURT: Sustain that objection.

24 BY MS. KUCHARSKI:

25 Q. Well, ultimately, Special Agent Taylor, there are two

1 confidential human sources who become a part of this
2 investigation, correct?

3 A. That is correct.

4 Q. All right. There's basically -- is it three meetings
5 that take place in total, three in-person meetings?

6 A. That is correct.

7 Q. I just want to clarify something in the complaint, and
8 I believe it starts on page 6.

9 There's a reference on page 6 in paragraph 18 to
10 Discord 1, and then I think later there might be a Discord
11 2. Maybe not. Yeah, there is.

12 There's a Discord 1 and a Discord 2 that are listed in
13 the complaint. And my question is, are Discord 1 and
14 Discord 2 separate people from confidential human source 1
15 and confidential human source 2?

16 MR. BROWN: Your Honor, I am going to object.
17 Footnote 7 is there to identify why Discord 1 and 2 were
18 used, so I object to this question.

19 THE COURT: Okay. The footnote that you are
20 referring to talks about screen names are known, but because
21 of an ongoing investigation are used to protect
22 investigative measures.

23 Your objection is to the question asking whether
24 the persons with the screen names Discord 1 and Discord 2
25 are also confidential human sources; is that correct?

1 Is that what you are objecting to?

2 MR. BROWN: Yes, Source 1 and Source 2.

3 THE COURT: Okay. As to which sources? I thought
4 there were two.

5 MS. KUCHARSKI: And, Your Honor, the reason for
6 the question is because it's confusing to me in reading the
7 criminal complaint because they don't just name somebody
8 either as Discord 1 or Discord 2. They interchange Discord
9 1 and Discord 2, and then there's a Confidential Human
10 Source 1 and a Confidential Human Source 2.

11 So I don't know if those two people are the same
12 people, or if there's four people. It's unclear to me. And
13 someone needs to clear it up for me.

14 THE COURT: I don't know if that matters, though,
15 does it?

16 MR. BROWN: It's not relevant to probable cause.

17 THE COURT: I don't think so. I am going to
18 sustain the objection.

19 BY MS. KUCHARSKI:

20 Q. As far as the first meeting, Special Agent, that
21 meeting takes place -- I should say the first meeting, is
22 the FBI monitoring that first in-person meeting?

23 A. We had agents in the area, yes.

24 Q. And what's the date of that first meeting?

25 I know the second meeting is May 2, and the third

1 meeting is May 8 when he's arrested.

2 Do you know what the first date of the meeting is, the
3 in-person meeting?

4 A. I am not 100 percent sure. I believe it was the
5 weekend prior, so April 25.

6 Q. So that first meeting -- would it be fair to say that
7 that first meeting just entailed Mr. Ferguson and one of the
8 confidential sources?

9 MR. BROWN: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MS. KUCHARSKI:

12 Q. That first meeting was approximately 15 minutes?

13 MR. BROWN: Objection, Your Honor.

14 And I'm going to raise a standing objection to
15 anything about the first meeting. It's not in the
16 affidavit.

17 Ms. Kucharski already established that there are
18 facts in this investigation that are not in the affidavit,
19 and this is just to establish the probable cause as set
20 forth in the affidavit.

21 THE COURT: I am looking, as the questioning is
22 going on here, to see if I can find a reference to the first
23 meeting.

24 So I do see that there's -- in paragraph 25, it
25 refers to the last two meetings, one on May 2 and one on May

1 8. I am looking before that to see where the first meeting
2 is referred to.

3 Is it, in fact, referred to in this affidavit,
4 Ms. Kucharski?

5 I am seeing it discusses postings and
6 conversations or discusses where he posts.

7 BY MS. KUCHARSKI:

8 Q. I will move on to the meeting on May 2.

9 Are you familiar with that meeting, Special Agent
10 Taylor?

11 A. Yes.

12 Q. And did you review all the text messages that went into
13 setting up that meeting?

14 A. I don't believe there were text messages. I believe
15 there were messaging on a private discord, but I did review
16 the messages back and forth.

17 Q. Okay. That would have set up that meeting?

18 A. That's correct.

19 Q. Okay. And that meeting occurred at the Cuyahoga Valley
20 National Park, correct?

21 A. No, that's incorrect.

22 Q. Oh, I'm sorry.

23 That's the meeting that took place in Lorain, correct?

24 A. It was Belden Park.

25 Q. And that's out in Lorain?

1 **A.** I believe the park is actually on the border there.

2 **Q.** It's in Lorain County. I am sorry.

3 And that's indicated on page 9 of the criminal
4 complaint, Camp Belden Wildlife in Lorain County?

5 **A.** That is correct.

6 **Q.** And in reviewing the conversations that went to set up
7 that meeting, they discuss going to a shooting range,
8 correct?

9 MR. BROWN: Objection.

10 THE COURT: I am sorry. You are saying in -- can
11 you repeat that question again, Ms. Kucharski?

12 MS. KUCHARSKI: Yes.

13 BY MS. KUCHARSKI:

14 **Q.** When that meeting was set up for May 2 with
15 Mr. Ferguson and the confidential human source, the course
16 of those discussions were talking about meeting at a
17 shooting range, correct?

18 MR. BROWN: Objection.

19 Could you point to the paragraph from the
20 affidavit where that's discussed?

21 MS. KUCHARSKI: It's not in the affidavit.

22 I am asking him a question in the course of his
23 investigation.

24 MR. BROWN: Then I'm going to raise my objection
25 that the defendant -- the defense attorney has already asked

1 the witness if there are facts that weren't included in the
2 affidavit, he said yes, there were.

3 But this hearing is about what's contained in the
4 affidavit to establish probable cause.

5 THE COURT: Well, I think it's permissible for her
6 to make that inquiry, because I mean he recognizes that
7 there were facts not included in the affidavit that were
8 part of the investigation.

9 I think she can ask that question. I don't think
10 she's necessarily restricted to the four corners of the
11 affidavit. Maybe he knows, maybe he doesn't know.

12 You may answer, Agent Taylor.

13 THE WITNESS: What is your specific question?

14 It was the firearms range?

15 BY MS. KUCHARSKI:

16 Q. Yeah. On May 2.

17 On that meeting, it was discussed that they were going
18 to go to a shooting range, correct?

19 A. To the best I recall, I believe they talked about it.
20 There was a shooting range out there. There was a
21 discussion where Camp Belden had a shooting range, but there
22 was a conversation on whether or not that location had a
23 shooting range.

24 Q. Okay. And, in fact, there was no shooting that was
25 ever done on that date, correct?

1 MR. BROWN: Objection, Your Honor.

2 THE COURT: He can answer if he knows.

3 THE WITNESS: That is correct. No shooting
4 occurred on that day.

5 BY MS. KUCHARSKI:

6 Q. Okay. And in the course of any of this investigation,
7 you don't have any evidence that Mr. Ferguson ever fired his
8 firearm in the presence of any of these confidential
9 sources, correct?

10 MR. BROWN: Again, Your Honor, I'm going to
11 object.

12 This is a probable cause hearing for an attempted
13 kidnapping, not a firearms or even a murder charge. This is
14 attempted kidnapping.

15 So we would object to the relevance of this line
16 of questioning.

17 THE COURT: I understand your objection, but I
18 will permit it.

19 THE WITNESS: Your Honor, I'm not aware -- I'm
20 sorry, Your Honor.

21 THE COURT: I was going to say, it might be more
22 relevant if we're talking about a detention hearing, but I
23 am going to permit the question.

24 THE WITNESS: I am not aware of him shooting the
25 firearm in front of the confidential human source.

1 BY MS. KUCHARSKI:

2 Q. That's the Confidential Human Source 1 or 2, correct?

3 A. That is correct.

4 I'm not aware of him firing any in front of either one
5 of those confidential human sources.

6 Q. And on the day that he was arrested, the May 8 date, he
7 didn't even have a firearm on his person or in his car, or
8 you never located any firearm at the Cuyahoga Valley
9 National Park when he was arrested, correct?

10 A. That is correct.

11 Q. And he didn't have any ammunition on him on May 8
12 either?

13 A. No, his ammunition was in the rifle back at his house.

14 Q. So it wasn't with him at the park where you arrested
15 him, correct?

16 A. Correct.

17 Q. And the purpose, according to the criminal complaint
18 that was prepared, the purpose of going to the park was to
19 do a dry run, right?

20 A. That is correct.

21 Q. On that day, on May 8, are you aware of whether
22 Confidential Source 1 or 2 had their firearms?

23 A. They did not have their firearms during the dry run,
24 that's correct.

25 Q. In the course of your investigation, can you tell the

1 court who suggested that location of Cuyahoga Valley
2 National Park?

3 Was that a location that Mr. Ferguson suggested, or was
4 that a location that one of the human sources suggested?

5 **A.** That was one of the human sources suggested.

6 **Q.** Okay. And without that suggestion, there's no federal
7 jurisdiction potentially, correct?

8 **A.** I can't say.

9 MR. BROWN: Object, Your Honor. I am sorry. I
10 objected before he answered. I was hitting my unmute
11 button.

12 THE COURT: I will sustain that objection.

13 That isn't a question that this witness should be
14 asked.

15 BY MS. KUCHARSKI:

16 **Q.** On May 8, the day of Mr. Ferguson's arrest, he drove
17 out to the park, but then ultimately left his car and got
18 into a car driven by one of the sources, correct?

19 **A.** Yes, that is correct.

20 **Q.** And the source then took him to a location where they
21 were going to do this dry run, correct?

22 **A.** Yes.

23 **Q.** So the source is the person that picked the location
24 within the park, correct?

25 **A.** Yes, this location.

1 **Q.** And are you aware of whether or not Mr. Ferguson had
2 ever been to the Cuyahoga Valley National Park prior to this
3 day?

4 MR. BROWN: Objection.

5 THE COURT: I think it's permissible.

6 If he knows the answer, he can answer.

7 THE WITNESS: I don't know. I'm not aware whether
8 he's been there before or not.

9 BY MS. KUCHARSKI:

10 **Q.** And in the criminal complaint, it talks about the hoax
11 call being placed on May 8, correct?

12 **A.** Where are you referencing in the complaint?

13 **Q.** Okay. That would be on page 14, paragraph 46.

14 MR. BROWN: Objection, Your Honor, both to
15 relevance and there's no question. It's just a reference.

16 THE COURT: Ms. Callahan, could you read back
17 whatever it was the last statement by Ms. Kucharski?

18 (Thereupon, the record was read back as requested.)

19 THE COURT: And so you are making a statement,
20 Ms. Kucharski.

21 I think I agree with Mr. Brown. It's not a
22 question. It's a statement.

23 MS. KUCHARSKI: I was directing him to the
24 complaint, so I could ask him a question about that.

25 THE COURT: But you didn't reference the paragraph

1 you are talking about. So if you want to direct him to
2 paragraph 46, go ahead.

3 BY MS. KUCHARSKI:

4 **Q.** Can you look at paragraph 46, Special Agent Taylor?

5 **A.** Yes.

6 **Q.** And it doesn't state in that paragraph who actually
7 placed that call, correct?

8 MR. BROWN: Objection.

9 THE COURT: Again, that's a statement rather than
10 a question, but I think it's permissible.

11 She's -- you know, she's cross-examining the
12 witness.

13 It's fine. I mean, he can look at the paragraph
14 as well. We can all look at the paragraph.

15 THE WITNESS: Yes, I agree.

16 BY MS. KUCHARSKI:

17 **Q.** And Mr. Ferguson is not the one that placed that phone
18 call?

19 **A.** Correct.

20 **Q.** And the agents who responded to that call, were they
21 aware of your surveillance of what was going on that day?

22 Were they aware that this hoax call could potentially
23 come in?

24 MR. BROWN: Objection. Asking what other people
25 knew or did not know.

1 THE COURT: I think it isn't worth very much,
2 because he doesn't necessarily know, but he can answer to
3 the best of his ability, Agent Taylor, but if you don't
4 know, you don't know.

5 THE WITNESS: So are you asking the other rangers
6 that responded, were they aware?

7 BY MS. KUCHARSKI:

8 Q. Yes.

9 A. Yes.

10 Q. And then Mr. Ferguson was arrested shortly after that,
11 correct?

12 A. Yes.

13 Q. Now, in the course of this investigation, the
14 confidential human source, or at least one of them, talks
15 with Mr. Ferguson about helping him or help -- or teaching
16 him certain military tactical maneuvers, correct?

17 MR. BROWN: Objection. Relevance to this hearing.

18 THE COURT: I think potentially it could be
19 relevant. I don't know. It could be relevant to a
20 kidnapping. I'm not sure. But he can answer it.

21 THE WITNESS: Mr. Ferguson did ask the
22 confidential human source to help or with certain military
23 knowledge and training, yes.

24 BY MS. KUCHARSKI:

25 Q. And that's because the confidential human source

1 portrayed themselves as somebody with a military background,
2 correct?

3 MR. BROWN: Objection.

4 THE COURT: I will let him answer.

5 THE WITNESS: Yes.

6 BY MS. KUCHARSKI:

7 Q. So, Agent Taylor, on May 8, 2020, Mr. Ferguson never
8 seized any law enforcement, correct?

9 A. That is correct.

10 Q. He saw --

11 MR. BROWN: I am sorry. I just -- was it sees,
12 S-E-E-S, or S-E-I-Z-E-D?

13 MS. KUCHARSKI: S-E-I-Z-E-D.

14 BY MS. KUCHARSKI:

15 Q. Is that how you understood it, Special Agent Taylor?

16 A. Yes.

17 Q. And Mr. Ferguson never made the hoax call that day,
18 correct?

19 A. Are you asking did he dial the number?

20 Q. Yes.

21 A. He did not, no.

22 Q. Okay. He -- Mr. Ferguson never kidnapped anybody that
23 day, correct?

24 A. That was not the operational day, no.

25 Q. Okay. He never abducted anybody or carried anybody

1 away, correct?

2 **A.** Correct.

3 **Q.** And, in fact, he didn't even have any weapons or
4 firearms on his person in that national park that day,
5 correct?

6 **A.** That is correct.

7 MS. KUCHARSKI: I have nothing further.

8 THE COURT: All right. Mr. Brown, do you have any
9 I suppose redirect for this witness?

10 MR. BROWN: Just a few, Your Honor. Thank you.

11 REDIRECT EXAMINATION OF RYAN TAYLOR

12 BY MR. BROWN:

13 **Q.** Special Agent Taylor, from March 21st to the May 8
14 arrest, did the defendant talk about having a hoax distress
15 call made as part of his plan to kidnap a federal agent --
16 or law enforcement?

17 **A.** Yes.

18 **Q.** And, in fact, on multiple occasions did he talk about
19 having a hoax distress call made as a way to lure officers
20 to an area?

21 **A.** Yes.

22 **Q.** And, in fact, on May 8, was the fact that a hoax call
23 was made consistent with the plan that the defendant
24 repeatedly talked about both in Discord and in person?

25 **A.** Yes.

1 **Q.** On May 8, was there an agreement among the CHS's and
2 the defendant about carrying firearms?

3 **A.** Yes.

4 **Q.** What was that agreement to the best of your knowledge?

5 **A.** So the confidential human sources and Mr. Ferguson had
6 agreed, because it was the dry run, they did not want to get
7 caught in the national park by park rangers or another law
8 enforcement in the area with any type of weapon on them. So
9 they agreed that for the dry run, they were going to what's
10 called a sanitary run, no knives, no guns, no weapons so
11 that they can move freely in and about the woods.

12 They were also concerned because it was hunting season
13 and things like that, and they didn't want to be caught in
14 the woods with a weapon.

15 **Q.** And did the defendant object to this plan?

16 **A.** No.

17 **Q.** In fact, did he agree to this plan?

18 **A.** Yes.

19 **Q.** Have a sanitary run?

20 **A.** Yes.

21 **Q.** In fact, at this time, did he possess a firearm that
22 you know of?

23 **A.** A possessed firearm on him in the park or --

24 **Q.** No, just in general.

25 **A.** Sorry. You are coming in a little broken there.

1 **Q.** But not in the park, but in general did he possess a
2 firearm?

3 **A.** That is correct.

4 **Q.** What kind of firearm?

5 **A.** He had an AR-15 rifle.

6 **Q.** Did he make any comments about an AR-15 while he was in
7 the park on May 8?

8 Did he make a comment about putting one round in a law
9 enforcement officer's head and having 29 left over?

10 **A.** Yes.

11 **Q.** Did he talk about setting up sniper positions on hills
12 or in one of the houses, so if law enforcement came up from
13 that way, he could shoot at them?

14 **A.** Yes.

15 **Q.** So based on your training and experience and knowledge
16 of this case, was a firearm part of a plan to kidnap or a
17 plan to carry out a kidnapping, even though he didn't have a
18 firearm during the dry run?

19 **A.** That is correct.

20 **Q.** Did he did -- do you know if he, in fact, stayed around
21 and watched to see if officers responded to the fake
22 distress call on May 8?

23 **A.** That is correct, he did.

24 **Q.** And did he, in fact, make any statements before he was
25 arrested about what he saw?

1 **A.** He made -- they talked about from where he was from his
2 observation, how many vehicles, how many officers he thought
3 had responded to the scene, along with the -- which way they
4 came in and also noting the time.

5 **Q.** Now, Special Agent Taylor, based on your review of the
6 Discord chats and the in-person conversations with CHS, was
7 the -- were the actions taken by the group on the dry run
8 consistent with the planning and the steps suggested by the
9 defendant during those chats and conversations?

10 **A.** Yes.

11 MR. BROWN: No further questions, Your Honor.
12 Thank you.

13 THE COURT: All right. I believe that concludes
14 the questioning of this witness.

15 So, Officer Taylor, you can leave if you wish to,
16 but you don't have to.

17 At this time, we will hear brief argument from
18 both sides as to the probable cause determination, keeping
19 in mind that the standard is a totality of the
20 circumstances, standard, that is, given all the
21 circumstances, is there a fair probability that the accused
22 has committed the crime that he is charged with.

23 And in this case, he's charged with attempted
24 kidnapping under Title 18, United States Code, Section
25 1201(a) (2) (5) and (d).

1 All right. So starting with counsel for the
2 United States.

3 MR. BROWN: Thank Your, Your Honor.

4 Your Honor, the government's position is that the
5 standard for proceeding to the grand jury has been met.

6 Certainly viewing the totality of the
7 circumstances as contained in the affidavit and also the
8 testimony provided today by Special Agent Taylor, the
9 elements to support a probable cause finding of attempted
10 kidnapping of both, an act occurring on the federal -- on
11 federal property and two federal officers has been met.

12 The affidavit and also Special Agent Taylor
13 testified that the chats began in March, proceeded through
14 April. And certainly as stated in the affidavit, there were
15 multiple statements of planning and steps that the defendant
16 felt should be taken centered around going to a remote
17 location, the use of weapons, the need of weapons, and also
18 the commitment of actions that were going to be necessary to
19 effectuate this kidnapping and then ultimate death.

20 The defendant talked about immobilizing agents or
21 law enforcement officers, either through the use of force or
22 threatened use of force, that he talked about how to lure
23 them out so their defenses would be down, where they would
24 be less suspecting of what was going to happen, like a
25 distress call, and I believe he said that a female calling

1 would achieve that even better than the male calling.

2 And then because of the remote location, they
3 would be able to detain, seize their weapons, seize them,
4 and if need be, dispose of their bodies.

5 So those chats were fairly and consistently put
6 out there on the Discord chat from March through April and
7 also repeated to the confidential human source on May 2 at
8 Belden Park.

9 Furthermore, on the day of the dry run, they did
10 talk about and agree to having a dry run, one without
11 weapons so they wouldn't get caught, so they would be able
12 to practice at a location what they thought they wanted to
13 do and how they would react.

14 They, in fact, took all the steps remotely. They
15 staggered the location. They placed the distress call. And
16 during the scouting time, the defendant made statements
17 consistent with the plans he had been making from March
18 until May 8 and also consistent with the idea that this was
19 a dry run in preparation for what they were going to do, the
20 kidnapping and any other acts that they were going to have
21 to take, including threats or actual physical force,
22 violence, including death.

23 Your Honor, the fact that he did not have a
24 firearm, I think, is -- if anything, it actually supports
25 the steps of planning that was represented. This was a dry

1 run, and as Special Agent Taylor testified, the lack of
2 weapons was important to the planning stage of this as a dry
3 run so they didn't get caught, so that they did have time to
4 make the hoax call, to see the response, so they would know
5 the next time that this happens, they would be able to
6 respond the way they wanted to, and they would be able to
7 control the attempted -- well, at that point, a kidnapping,
8 because this is the attempt.

9 Your Honor, set forth I think over the span of the
10 15 pages is more than enough facts of planning,
11 follow-through and coordination that supports a finding of
12 probable cause for the charges of 1201(a)(2) and (a)(5) and
13 (d), the attempted kidnapping.

14 Thank you, Your Honor.

15 THE COURT: Ms. Kucharski.

16 MS. KUCHARSKI: Thank you, Your Honor.

17 Obviously, Your Honor, in these types of
18 situations, the defense is always at a handicap coming in
19 when we don't have the entire conversations, but we have
20 snippets here and there and just bits and pieces that the
21 government decides to craft together in a criminal complaint
22 to support probable cause.

23 And, you know, we do agree, probable cause is just
24 that, probable cause. You know, it doesn't require, at this
25 stage, proof beyond a reasonable doubt. It's basically, I

1 guess if you're going to look at it in percentage-wise, you
2 know, anything over 50 percent, 51 percent or higher.

3 I just point out that the defense is at a severe
4 disadvantage because we don't have the entire conversations,
5 but we do know little snippets here and there that a
6 confidential human source, not just one, but two were
7 introduced in this case.

8 We know that the confidential human source is the
9 one that picked the location that had Mr. Ferguson meet him
10 there, that once they met there was then -- Mr. Ferguson was
11 then driven to another location, and that was all at the
12 doing of the confidential source.

13 There were no firearms. Nobody was seized.
14 Nobody was kidnapped. Nobody was abducted.

15 So right now, this is a lot of talk, but really
16 with no action that really substantiates anything by
17 Mr. Ferguson, because Mr. Ferguson is not the one who placed
18 the hoax call. Certainly he was there.

19 And right now, the complaint is crafted as an
20 attempted kidnapping, but I would submit to the court that
21 the government hasn't presented probable cause on an
22 attempted kidnapping based on the fact that Mr. Ferguson
23 didn't place the hoax call and Mr. Ferguson was not armed
24 with any type of weapon, and he was brought to that location
25 by the confidential human source.

1 So for those reasons, we would ask the court to
2 dismiss the complaint.

3 THE COURT: All right. As I indicated earlier,
4 the standard for determining probable cause is the totality
5 of the circumstances.

6 In this case, circumstances are those set forth in
7 the affidavit attached to the criminal complaint, as well as
8 in the additional testimony here today from the agent.

9 And the charge here is not kidnapping. It is
10 attempted kidnapping. And that obviously is a difference.
11 I understand that defendant feels that they're handicapped
12 without having all the information that law enforcement has
13 or not -- don't have access currently to all of the
14 conversations, the totality of the conversations.

15 That is a situation that, of course, it's not
16 unique to this case, but probably in most probable cause
17 determinations following the filing of the criminal
18 complaint. That situation does exist.

19 The court must do the best it can based on what is
20 before it.

21 The fact that the defendant did not place the
22 call, I think, is not really all that persuasive, although,
23 a great deal of weight is placed on it by defense counsel.

24 If the defendant was the architect of the overall
25 plan and the persons accompanying him were charged with

1 carrying out pieces of the plan, it doesn't matter, I don't
2 believe, that the defendant did not personally make the
3 call.

4 So the defendant had apparently, according to the
5 evidence as we understand it, outlined a plan. He's done
6 that not just on one occasion, but had been consistent over
7 the course of a couple months in developing that plan that
8 would result in a kidnapping and potential harm to law
9 enforcement.

10 He had gone so far as to, you know, detail some of
11 the pieces of the plan that he felt were necessary. It
12 would be necessary to have firearms. He did, in fact, have
13 an assault rifle and he had ammunition for the assault
14 rifle.

15 Again, I don't think it's particularly important
16 or persuasive that he didn't have that assault rifle with
17 him on the occasion of the dry run. The fact that the
18 defendant and the confidential sources elected and decided
19 not to have weapons with them on that dry run doesn't take
20 away from the evidence as the overall plan and to the part
21 that the dry run played in the overall plan. The dry run
22 was a dry run. It was not actual implementation of the
23 final objective of the plan.

24 The fact that a dry run occurred at all, I think,
25 is consistent with the defendant having a number of

1 communications, outlined what he felt was the way that this
2 should be carried out and that is there needed to be a call
3 that was a hoax call, in effect, that would be made that
4 would draw law enforcement to a remote location.

5 I understand that he did not select the precise
6 location where the dry run was done, but he did describe
7 what he felt needed to be in place. They needed a remote
8 location. They needed a call to be made that would draw law
9 enforcement. Those things were done on May 8 to draw law
10 enforcement. They didn't have firearms with them because it
11 was a dry run. I don't think there's anything inconsistent
12 about that.

13 You know, I can see where later on during the
14 course of this case, there may be defenses that the
15 defendant can attempt to flush out and develop more facts on
16 with regard to his role versus the respective roles of the
17 confidential human sources.

18 But at this juncture, I think that the prosecution
19 has presented enough to constitute probable cause that the
20 crime was committed and that it was committed by this
21 defendant.

22 Accordingly, this case -- you know, I will find
23 that probable cause has been demonstrated for the charge
24 made against this defendant.

25 The defendant has waived his right to a detention

1 hearing. So at this time, Mr. Ferguson, you will be
2 detained pending further proceedings in the case.

3 MS. KUCHARSKI: Your Honor, I just want to clarify
4 for the record.

5 Mr. Ferguson has waived detention at this juncture
6 because we're trying to secure a location for him to go to
7 because the residence of his father right now, his father
8 has to leave and relocate, and I did discuss this with the
9 government, and the government is aware that once the father
10 or another location is secured, that the defendant,
11 Mr. Ferguson, will be presenting to the court a request for
12 bond at that time.

13 So I just wanted to be clear on any form that he
14 signs that this was discussed with the government and they
15 are aware that this will be coming and they don't have an
16 objection to us bringing up the issue on that later date.
17 It's not to say that they will agree he will get a bond, but
18 they're aware that it will be presented.

19 THE COURT: So if his circumstances should change,
20 he certainly can raise that at a later date. And I take it
21 that's what you are saying. You believe there may be a
22 change in the circumstances such that while he doesn't have
23 a place to go right now, he may have a place to go some
24 point in the future.

25 MS. KUCHARSKI: That's correct.

1 THE COURT: Okay. I understand what you're
2 saying.

3 He probably -- did he sign a waiver form, but it
4 generally does contain the language that he reserves the
5 right to raise the issue at a later date if his
6 circumstances should change. That's usually in that form.

7 MS. KUCHARSKI: And I don't know because I didn't
8 see the form, but Heather did indicate that she was going to
9 send a form down for him to sign. So I just thought it best
10 that I place something on the record should there be a
11 question about it later.

12 THE COURT: That's the standard form.

13 Okay. Was there anything else?

14 MS. KUCHARSKI: No, Your Honor.

15 THE COURT: Okay. Anything from the government?

16 MR. BROWN: Sorry, Your Honor.

17 Nothing from the government. Thank you.

18 THE COURT: All right. And, Mr. Ferguson, you
19 will be remanded to the custody of the United States
20 marshal.

21 Mr. Ferguson looks like he was waving his hand.

22 Do you wish to speak with your attorney,
23 Mr. Ferguson?

24 THE DEFENDANT: I am not sure if I am allowed in
25 front of anyone, or should I talk to my attorney before I

1 say it?

2 THE COURT: I don't know what you're going to say.

3 MS. KUCHARSKI: I would prefer that you not say
4 anything at this juncture, and you and I will talk after
5 this hearing.

6 THE DEFENDANT: Okay.

7 THE COURT: So at this time, he will be remanded
8 to the custody of the United States Marshals pending further
9 proceedings.

10 And that concludes this hearing. Thank you.

11 C E R T I F I C A T E

12 I certify that the foregoing is a correct transcript
13 from the record of proceedings in the above-entitled
14 matter.

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